

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-97-0428-AP
)
) Appellee,)
)
) v.) Maricopa County
) Superior Court
)
TIMOTHY STUART RING,) No. CR-95-01754 (A)
)
)
) Appellant.)
)
_____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-99-0378-AP
)
) Appellee,)
)
) v.) Pima County Superior
) Court
)
) Nos. CR-58177 and
LEMUEL PRION,) CR-60263
)
)
) Appellant.)
)
_____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-99-0243-AP
)
) Appellee,)
)
) v.) Pima County Superior
) Court
)
) No. CR-40086
ANDRE LAMONT MINNITT,)
)
)
) Appellant.)
)
_____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-01-0272-AP
)
) Appellee,)
)
) v.) Yuma County Superior
) Court
)
) Nos. S1400CR198311801
BERNARD SMITH,) and S1400CR198311817
)
)
) Appellant.)
)
_____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-99-0536-AP
 Appellee,)
) Maricopa County
 v.) Superior Court
) No. CR96-04691
 ANTOIN JONES,)
)
 Appellant.)
)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-99-0439-AP
 Appellee,)
) Pima County Superior
 v.) Court
) No. CR-58016
 DANNY N. MONTANO,)
)
 Appellant.)
)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-00-0328-AP
 Appellee,)
) Maricopa County Superior
 v.) Court
) No. CR98-04885
 WAYNE BENOIT PRINCE,)
)
 Appellant.)
)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-00-0360-AP
 Appellee,)
) Mohave County Superior
 v.) Court
) No. CR-98-838
 MICHAEL GENE BLAKLEY,)
)
 Appellant.)
)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-00-0447-AP
)
 Appellee,)
)
 v.) Maricopa County Superior
) Court
) No. CR1997-011695
 HENRY WILLIAM HALL,)
)
)
 Appellant.)
)
 _____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-01-0275-AP
)
 Appellee,)
)
 v.) Maricopa County Superior
) Court
) No. CR 1999-095294
 SHAWN RYAN GRELL,)
)
)
 Appellant.)
)
 _____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-00-0508-AP
)
 Appellee,)
)
 v.) Mohave County Superior
) Court
) No. CR-98-1243
 JAMES EDWARD DAVOLT, II,)
)
)
 Appellant.)
)
 _____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-00-0544-AP
)
 Appellee,)
)
 v.) Maricopa County Superior
) Court No. CR1997-03949
)
 LEROY D. CROPPER,)
)
)
 Appellant.)
)
 _____)

STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-00-0595-AP
Appellee,)	
	)	Pima County Superior
v.	)	Court
	)	No. CR-61846
SHAD DANIEL ARMSTRONG,)	
)	
Appellant.)	
_____)	
STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-01-0091-AP
Appellee,)	
	)	Maricopa County Superior
v.	)	Court
	)	No. CR1999-015293
EUGENE ROBERT TUCKER,)	
)	
Appellant.)	
_____)	
STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-01-0100-AP
Appellee,)	
	)	Pima County Superior
v.	)	Court
	)	No. CR-64663
KAJORNSAK PRASERTPHONG,)	
)	
Appellant.)	
_____)	
STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-01-0103-AP
Appellee,)	
	)	Pima County Superior
v.	)	Court
	)	No. CR-64663
CHRISTOPHER BO HUERSTEL,)	
)	
Appellant.)	
_____)	

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-01-0129-AP
 Appellee,)
 v.) Maricopa County Superior
) Court
) No. CR1997-05555
 SHERMAN LEE RUTLEDGE,)
)
 Appellant.)
 _____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-01-0270-AP
 Appellee,)
 v.) Maricopa County Superior
) Court
) No. CR1996-011714
 CHRISTOPHER GEORGE THEODORE)
 LAMAR,)
)
 Appellant.)
 _____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-01-0421-AP
 Appellee,)
 v.) Maricopa County Superior
) Court
) No. CR1995-006472
 MICHAEL JOE MURDAUGH,)
)
 Appellant.)
 _____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-02-0042-AP
 Appellee,)
 v.) Maricopa County Superior
) Court
) No. CR1999-003536
 BRIAN JEFFREY DANN,)
)
 Appellant.)
 _____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-02-0044-AP
 Appellee,)
) Pima County Superior
 v.) Court
) No. CR-43804
 ROBERT JOE MOODY,)
)
 Appellant.)
 _____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-99-0296-AP
 Appellee,)
) Pima County
 v.) Superior Court
) No. CR-61452
 KEITH ROYAL PHILLIPS,)
)
 Appellant.)
 _____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-99-0551-AP
 Appellee,)
) Pima County Superior
 v.) Court
) No. CR-61452
 MARCUS LASALLE FINCH,)
)
 Appellant.)
 _____)

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-99-0438-AP
 Appellee,)
) Maricopa County Superior
 v.) Court
) No. CR-98-003520
 JOHN EDWARD SANSING,)
)
 Appellant.)
 _____)

STATE OF ARIZONA,	)	Supreme Court
	)	No. CR-98-0289-AP
)	
Appellee,)	
)	
v.	)	Maricopa County Superior
	)	Court
JAMES CORNELL HARROD,	)	No. CR95-09046
)	
Appellant.)	
)	

STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-98-0376-AP
)	
Appellee,)	
)	
v.	)	Maricopa County Superior
	)	Court
DARREL PETER PANDELI aka DARREL	)	No. CR-93-08116
PETER FLORIAN,)	
)	
Appellant.)	
)	

STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-97-0317-AP
)	
Appellee,)	
)	
v.	)	Maricopa County
	)	Superior Court
	)	No. CR 92-05731
SCOTT ALAN LEHR,)	
)	
Appellant.)	
)	

STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-98-0488-AP
)	
Appellee,)	
)	
v.	)	Pinal County
	)	Superior Court
	)	No. CR-96-021235
ARTURO ANDA CANEZ,)	
)	
Appellant.)	
)	

STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-97-0349-AP
Appellee,)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CR-94-11397
AARON SCOTT HOSKINS,)	
)	
Appellant.)	
_____)	
STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-98-0278-AP
Appellee,)	
	)	Pima County
v.	)	Superior Court
	)	No. CR-55947
SCOTT DOUGLAS NORDSTROM,)	
)	
Appellant.	)	O R D E R
_____)	

The pre-briefing conference was held on July 15, 2002, in open court with Andrew Hurwitz appearing as lead counsel for Appellants, John Stookey, Julie Hall and Rudolph Gerber, assisting for Appellants, and Kent Cattani, Assistant Attorney General, appearing for the State.

IT IS ORDERED:

1. The State shall file a single brief addressing the following:

- A. The State shall identify those cases in which it is not asserting harmless error.
- B. Whether Ring v. Arizona, 122 S. Ct. 2428 (2002), is inapplicable to any of the aggravating factors listed in A.R.S. § 13-703(G).
- C. Whether the finding of an aggravating factor can be implicit in the jury's verdict of conviction. For example, whether a finding of A.R.S. § 13-703(G)(8) or (5) is implicit in a jury verdict of guilt of multiple counts of

homicide or felony murder, and if so, whether the appellant is therefore not entitled to resentencing under Ring. The brief shall identify which aggravating factor(s) in A.R.S. § 13-703(G) falls within this category.

- D. Whether an appellant is entitled to resentencing under Ring if one aggravating factor was not subject to Ring or was explicitly or implicitly found by the jury, but appellant was deprived of a jury trial on others relied on by the trial court.
- E. Whether an appellant is entitled to resentencing under Ring if the appellant conceded or did not challenge the aggravating factors found by the trial court. Whether an appellant is entitled to resentencing under Ring if the appellant conceded, or did not challenge, some but not all of the aggravating factors found by the trial court.
- F. Whether an appellant is entitled to resentencing under Ring if the State did not argue harmless error in those cases in which the U.S. Supreme Court granted certiorari and remanded. (State v. Ring; State v. Sansing; State v. Harrod; State v. Pandeli)
- G. Whether Ring explicitly or implicitly requires a jury to make Enmund/Tison findings.
- H. Whether any new or amended capital sentencing statute would violate the state or federal Ex Post Facto Clause if applied to these cases.
- I. Whether using a new jury (a jury other than the trial jury) to determine aggravating factors in these cases would violate the Double Jeopardy Clause.
- J. Whether a sentence can be reduced to natural life if the crime was committed before A.R.S. § 13-703(A) was amended to allow a sentence of natural life.
- K. Any other issue common to all or a significant number of the consolidated cases.

2. The State's brief shall be filed no later than August 14, 2002, and shall be no more than 75 pages in length.

3. Lead counsel for Appellants shall file a responsive brief no later than September 25, 2002, which shall be no more than 75 pages in length.

4. The State may file a reply brief no later than October 15, 2002, which shall be no more than 20 pages in length.

5. Jennifer Bedier and David Darby shall file a single brief addressing whether Ring applies to cases such as State v. Hoskins and State v. Nordstrom where the petition for writ of certiorari was denied (prior to the filing of Ring) but the direct appeal mandate has not been issued. The State shall file a simultaneous brief addressing the same issue. The briefs shall be filed no later than August 14, 2002, and shall be no more than 10 pages in length. Responsive briefs, limited to 5 pages, may be filed no later than August 21, 2002.

6. Counsel for any of the Appellants may move for permission to file a supplemental brief on any of the issues listed or on any other issue peculiar to their client's case. Any such motion shall explain why supplemental briefing is required and shall be filed no later than September 27, 2002.

DATED this _____ day of July, 2002.

STANLEY G. FELDMAN
Duty Justice

TO:

Janet A Napolitano, Arizona Attorney General

Attn: Kent E Cattani

Andrew Hurwitz

John Stookey

Susan A Kettlewell, Pima County Public Defender

Attn: Brian X Metcalf, Lori J Lefferts, Rebecca A McLean, John F
Palumbo and Frank P Leto

Carla G Ryan

John W Rood III

James J Haas, Maricopa County Public Defender's Office

Attn: Garrett W Simpson, Carol A Carrigan, Stephen R
Collins, Lawrence S Matthew, Edward F McGee, James L Edgar,
Charles R Krull, James R Rummage, Christopher Johns, James H
Kemper, Terry J Adams, and Spencer D Heffel

J Conrad Baran

Thomas A Gorman

Rudolph J Gerber, Shughart Thomson Kilroy Goodwin Raup PC

Jennifer Bedier, Arizona Capital Representation Project

Julie S Hall, Arizona Capital Representation Project

Harriette P Levitt

S Jonathan Young, Law Offices of Williamson & Young PC

Robert W Doyle

Richard L Strohm, Law Offices of Richard L Strohm

Susan M Sherwin, Maricopa County Legal Advocate

Attn: Brent E Graham

Michael S Reeves

J Douglas McVay

Stephen M Johnson

David Alan Darby

Thomas J Phalen

Tara K Allen

Kerrie Droban

Jonathan Bass, Arizona Death Penalty Judicial Assistance Program

(Southern Counties) [Information Copy Only]

Andrew P Zinner, Arizona Death Penalty Judicial Assistance Program

(Northern Counties) [Information Copy Only]